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December 20, 2006

Chairman Kevin J. Martin  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Re: *Ex-parte Presentation; Reexamination of Roaming Obligations of Commercial  
Mobile Radio Service Providers; WT Docket No. 05-265*

*Request for Expedited Resolution of Proceeding*

Dear Chairman Martin:

MTA Communications, Inc. d/b/a MTA Wireless ("MTA Wireless"), by its undersigned counsel and pursuant to section 1.1206 of the Commission's Rules, submits this letter in support of the comments filed by commercial mobile radio service ("CMRS") providers in this docket requesting that the Commission adopt rules requiring all wireless carriers to offer automatic roaming for each service the requesting carrier is offering. A full record in response to the Commission's latest inquiry in this subject area has been developed, and MTA Wireless requests that the Commission expedite its implementation of regulatory mandates supporting robust competition in the wireless industry and the availability of seamless access to a full array of services by wireless end users in all parts of the country.

MTA Wireless is a member of the group of twenty-five regional and rural carriers that submitted a letter on September 20, 2006 in this docket urging the Commission to adopt rules pursuant to the CMRS Roaming Principles outlined by those carriers.<sup>1</sup> Based on its own experience in the industry, MTA Wireless herein offers further support that rules adopted pursuant to the CMRS Roaming Principles will allow small and rural carriers to secure reasonable, affordable access to critically required roaming services for their customers.

The record developed in this proceeding demonstrates that virtually every CMRS provider agrees that access to automatic roaming services is vital to provide consumers with ubiquitous wireless service, and that rural customers overwhelmingly rely on roaming services

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<sup>1</sup> See Letter from Southern Communications Services, Inc. d/b/a SouthernLINC Wireless, *et. al.*, to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission, dated September 20, 2005.

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to achieve seamless wireless coverage.<sup>2</sup> The record also demonstrates that the recent consolidation in the CMRS marketplace has brought urgency to this issue. The Commission initiated this proceeding to re-examine the need for CMRS roaming obligations in light of the continued consolidation nationwide of the CMRS market and the resulting decrease in competitive options for roaming services.<sup>3</sup>

MTA Wireless is a regional carrier in Alaska that provides wireless coverage to numerous remote communities within the study area of Matanuska Telephone Association, a rural local exchange carrier serving rapidly growing communities north of Anchorage. Within the service area covered by its rural service area (RSA) cellular license, MTA Wireless offers a full range of CDMA-based competitive cellular services, including voice and data signals using 1XRTT technologies. Our customers report excellent service quality while operating their wireless service within the reach of the MTA Wireless equipment and spectrum. However, a large number of MTA Wireless subscribers commute to Anchorage for work. Because MTA Wireless has been able to procure a voice roaming agreement, commuters can use their wireless phones while traveling to and from their homes and workplace. Unfortunately, these subscribers are unable to utilize data services for more than a short portion of their daily commute since Anchorage lies outside of the coverage area of the MTAW system and because MTA Wireless does not have a data roaming agreement that covers Anchorage.

MTA Wireless faces increasingly intense competition for subscribers that live within its coverage area from four larger wireless operators whose spectrum assets provide them coverage across the entire state of Alaska – Dobson Cellular Systems, ACS Wireless, Alaska DigiTel (“DigiTel”), and GCI Communications (GCI). In order for its subscribers to have access to mobile services outside of its limited geographic service area, MTA Wireless depends on the willingness of its larger competitors to agree to the provision of automatic roaming rights on commercially reasonable terms. While MTA Wireless has succeeded in negotiating for such rights for voice services with ACS Wireless, it has faced resistance in attempting to secure such rights for data services. Given the rapid growth today of demand for mobile data services, the lack of access to such services threatens the very survival of MTA Wireless as a competitive force.

Differing technology platforms employed within the CMRS sector limit MTA Wireless' available options for pursuing data roaming rights with strategic partners. Now, two of the four CMRS competitors in Alaska with state-wide spectrum coverage – DigiTel and GCI – have

<sup>2</sup> See Comments of The National Telecommunications Cooperative Association, filed November 28, 2005, at 2; Comments of The Rural Telecommunications Group, Inc. and the Organization for the Promotion and Advancement of Small Telecommunications Companies, filed November 28, 2005, at 4-5.

<sup>3</sup> *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Memorandum Opinion & Order and Notice of Proposed Rulemaking, 20 FCC 15047 (2005).

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applied to the Commission for authority to consolidate their spectrum holdings, further reducing MTA Wireless' data roaming options prospectively.

MTA Wireless strongly endorses the arguments advanced by ACS Wireless in its comments in this proceeding advocating mandatory access among operators to wireless roaming for data services on non-discriminatory and commercially reasonable terms.<sup>4</sup> The regulatory enforcement of agreements for such services negotiated in good faith is today critical to ensuring both access to advanced services by end users in geographically remote parts of Alaska, and the ability of smaller carriers like MTA Wireless to continue to offer competition that will result in the delivery of services at affordable rates and on desirable terms. The arguments offered by ACS Wireless for mandating access by carriers in Alaska to the larger markets in the Lower 49 states are equally relevant for competitors of unequal bargaining power within specialized geographic markets, like that of Alaska itself.

MTA Wireless, therefore, submits this letter in further support of the CMRS Roaming Principles that were introduced in the September 20, 2006 letter. The Commission adoption of rules based on these principles would neutralize the disparate market realities that large carriers utilize to discriminate against small carriers in negotiating wholesale automatic roaming agreements. A copy of the CMRS Roaming Principles is attached to this letter.

The record demonstrates, and MTA's own experience confirms, that there is a growing concern that nationwide carriers will be reluctant or unwilling to enter into automatic roaming agreements for advanced data or other enhanced services.<sup>5</sup> The CMRS Roaming Principles require that all carriers provide in-bound automatic roaming for *all* services that a carrier is currently offering. MTA Wireless urges the Commission to adopt these Principles to cover all carriers, not only nation-wide carriers, and to apply to *all* carrier services, including data services.

The CMRS Roaming Principles also require that all carriers must negotiate automatic roaming agreements in good faith. This principle requires that the Commission adopt rules to ensure that large carriers cannot discriminate in offering agreements to small, rural CMRS carriers. Further, strengthening the Section 208 complaint process as called for in the CMRS Roaming Principles would ensure smaller carriers an effective avenue for redress in the event that larger carriers abuse their market power, and further would keep the Commission's involvement minimal and reserved to times when it is necessary.

MTA Wireless hereby urges the Commission to act quickly to adopt automatic roaming obligations for all CMRS providers for all services. The Commission has allowed far too much time to elapse without taking corrective action in defense of competition and of rural subscribers

<sup>4</sup> See Comments of ACS Wireless, Inc., filed November 28, 2005.

<sup>5</sup> See Reply Comments of Suncom Wireless, Inc. filed January 26, 2006, at 2-4; Comments of ACS Wireless, at 1-2.

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in the burgeoning wireless industry. It has closed its last two roaming rulemaking dockets without implementation of reforming regulations on the ground that the records in those proceedings had become stale in the face of rapidly evolving technologies.<sup>6</sup> Given the full record that the industry has produced in this latest proceeding over the last 15 months, the Commission must not allow a similar result due to inaction.

The real-life experience of MTA Wireless demonstrates that there is insufficient commercial incentive for CMRS operators to support the rapidly growing customer service needs for mobile services in all parts of the country, particularly in rural areas. Commission rules based on the CMRS Roaming Principles will directly protect customers in remote, rural areas who rely on roaming to receive reasonably comparable, seamless, ubiquitous wireless service that customers in more populated areas receive, and will further even the playing field for competitors in these underserved areas. This docket is ripe for resolution. MTA Wireless urges that the Commission take steps expeditiously to implement the attached CMRS Roaming Principles for voice and data services alike.

Sincerely yours,



Stefan M. Lopatkiewicz  
Counsel to MTA Communications, Inc. d/b/a MTA  
Wireless

Attachment

<sup>6</sup> The first proceeding in the Commission's series of roaming inquiries was terminated in August 2000, because changes in the market and technology had rendered the record stale. See *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, Third Report and Order and Memorandum Opinion and Order on Reconsideration, 15 FCC 15975 (2000). In October 2000, the Commission opened a new proceeding to reexamine roaming obligation issues. See *Automatic and Roaming Obligations Pertaining to Commercial Mobile Radio Services*, Notice of Proposed Rulemaking, 15 FCC Rcd 21628 (2000). In the *Memorandum Opinion & Order and Notice of Proposed Rulemaking* that opened this proceeding, the Commission closed the 2000 proceeding without adopting rules because, again, market conditions had rendered the record stale. 20 FCC at 15048.

## CMRS Roaming Principles

Roaming services are an essential component of mobile telecommunications services and fulfill an important public safety role. Ensuring that consumers have near ubiquitous access to roaming services, no matter where they travel, is in the public interest. Access to roaming services is particularly critical for consumers who are underserved or who live in rural and remote areas with fewer competitive options. Access to roaming services fosters competition in the wireless market and encourages new entrants. Given the importance of roaming services, the FCC should adopt rules to facilitate automatic roaming for all wireless customers based upon the following principles:

- Carriers must provide in-bound automatic roaming (i.e., permitting another carrier's customers to roam onto its network) to any requesting carrier with a technologically compatible air interface. All services that a carrier is currently offering (e.g., voice, data, dispatch) must be offered to a requesting carrier with a technologically compatible air interface.
- Carriers must provide in-bound automatic roaming services under rates, terms and conditions that are just, reasonable and non-discriminatory. In this respect, the FCC clarifies that Sections 201 and 202 do apply to roaming services.
- Carriers must negotiate in good faith.
  - FCC involvement is required only if a complaint is filed.
- The §208 complaint process should be strengthened to ensure it is an effective avenue for redress. To do so the FCC should incorporate the following presumptions:
  - A reasonable rate presumption. FCC should adopt the presumption that a just and reasonable wholesale rate for roaming cannot be higher than the carrier's best retail rate or average retail rate per minute.
  - A technical feasibility presumption. If a carrier is already providing roaming service (data, voice, dispatch) to other carriers using the same air interface then the roaming service will be presumed to be technically feasible (shifting the burden of proving it is not technically feasible)
  - A rapid response mechanism. Because of the competitive nature of the wireless industry, complaints cannot be allowed to languish indefinitely. Therefore, roaming complaints will be placed on the Enforcement Bureau's Accelerated Docket under Section 1.730 of the Commission's Rules.